



Department of Toxic Substances Control

EC-2000-007
IV-D-172

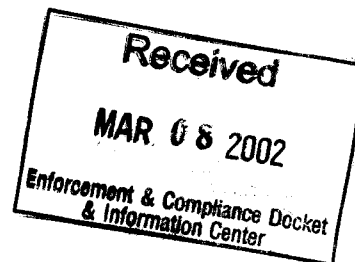


Winston H. Hickox
Agency Secretary
California Environmental
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Edwin F. Lowry, Director
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Sacramento, California 95812-0806

Gray Davis
Governor

February 25, 2002



United States Environmental Protection Agency
Enforcement and Compliance Docket and
Information Center, (Mail Code 2201A)
Attention: Docket Number EC - 2000-007
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

COMMENTS ON CROSS MEDIA ELECTRONIC REPORTING AND RECORD KEEPING RULE

Enclosed are the comments from the California Department of Toxic Substances Control concerning the proposed federal rule.

If you have any questions concerning these comments, you may contact me or Mr. Frank Lauricella of my staff at (916) 323-2964.

Sincerely,

Frederick S. Moss, Chief
Permitting Division
Hazardous Waste Management Program

Enclosure

cc: Mr. Edwin F. Lowry, Director
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The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.

United States Environmental Protection Agency

February 25, 2002

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COMMENTS ON THE US EPA'S PROPOSED CROSS-MEDIA ELECTRONIC REPORTING AND RECORD-KEEPING RULE (CROMERRR)

INTRODUCTION

The U.S. Environmental Protection Agency (U.S. EPA) is proposing to establish a significant program to regulate how electronic documents are transmitted to and stored by businesses, states, and U.S. EPA. These standards are viewed by some businesses as being onerous, expensive, and unnecessary. Additionally, as part of this rulemaking, U.S. EPA is establishing not only storage and transmittal standards, but also U.S. EPA's standards for establishment and approval of a delegated state to be able to receive and store electronic documents. The rule creates another delegation process that will significantly affect California. Subpart D details the Electronic Reporting and Record Keeping requirements to be met by an Approved State Program. It is in this area that these comments are focused.

GENERAL

U.S. EPA is proposing to establish another level of approval for delegated states. According to the U.S. EPA fact sheet, CROMERRR would not do many things including the following:

Obligate regulated entities to submit or maintain records electronically.

Comment: While the above is technically correct, the proposed rule would require regulated entities to use U.S. EPA's approved format if they desired to submit reports electronically or to store records electronically. While submitting reports electronically may not have a significant impact on businesses and governments, mandating that records be maintained only in the U.S. EPA approved standard will create a significantly large burden. Unless the state, tribal, or local environmental programs adopt the proposed standards and conform to the authorization requirement, this proposal would prohibit them from receiving and maintaining these records electronically. We do not want to maintain paper, computer disk, or computer tape records in the future as technology advances and electronic transmittal and storage of reports becomes more possible.

Mandate that U.S. EPA or approved/authorized states accept electronic reports or allow electronic record keeping.

Comment: While the rule does not mandate acceptance of the standards, it does in fact prohibit approved/authorized states from accepting electronic reports or allowing electronic record keeping in any other format than that developed by U.S. EPA. This means that any emerging storage technology could only be used upon U.S. EPA's approval. This not only unnecessarily restricts states, it hampers the spread of new technology by subjugating it to U.S. EPA's approval processes.

Require U.S. EPA programs or states use U.S. EPA's Central Data Exchange (CDX) to receive electronic submissions.

Comment: The proposed rule actually limits businesses and approved/authorized states to using only CDX or an "approved" state/local system. If the state cannot achieve "approved" status, it cannot receive required reports from businesses and those businesses can only use CDX as an alternative.

Govern state provisions for electronic reporting or record keeping where these are not subject to approval under U.S. EPA "state primacy" regulations.

Comment: The only provisions not subject to approval are old technologies and paper. The rule severely limits any state's ability to use emerging technologies and forces the states to accept U.S. EPA's standards or to continue to use old technology.

DEFINITIONS

Section 3.2000(a) describes the requirements for acceptable electronic document receiving systems. The following key phrases are used and are not defined. The security system is required to:

- Have "strong and effective protections" against unauthorized access and use.
- Must provide for the detection of unauthorized access or "attempted access."
- Ensure that the clock system is protected from tampering or "other compromise."
- Have "strong and effective protections" against any "other foreseeable corruption or compromise" of the system.

The terms "strong and effective" are subjective and are not defined anywhere in the regulatory proposal. The term "other compromise" is not defined in the regulatory proposal. U.S. EPA should set objective standards for states, tribes, and local environmental programs to meet or define what is meant by these terms.

These phrases are ambiguous at best, and must be well defined because they affect the entire system.

DOCUMENT RECEIVING SYSTEM

Section 3.2000(e) of the proposed rule details what a state's electronic receiving system must be capable of doing in order to be approved so that businesses can submit documents to the state. In general, this section requires that a state construct a receiving system that also provides businesses online protected access to the information received and all of the transmittal and storage details about the document as well as restricting access to all of this information to only the appropriate business.

Section 3.2000(e)(2) requires the creation of a fully interactive system that is well past the concepts of submitting a document. Creating such a system is expensive and with

the previous mentioned security requirements, leaves states open to significant future liability.

Section 3.2000(e)(3) requires the creation of a system that not only receives a document, but requires the creation of an electronic "copy of record" that captures large amounts of information about the submission and authentication process. This mandates a significantly elaborate document management system behind the electronic document submission system.

Section 3.2000(f) requires that an Approved/Delegated state build a system that creates a Transaction Record that captures every detail of what happened to an electronic document from the time it left the senders computer. This includes all instructions, prompts, warnings, data formats and labels, as well as the sequencing and functioning of these elements. This is a very large requirement in terms of how such information is captured, maintained, and presented to a viewer.

Section 3.2000(g) requires that the Transaction Record from Section 3.2000(f) include all of the actual screens viewed by the sender be captured as a permanent part of the record. Additionally, the storage system must preserve the document and Transaction Record in their entirety without alteration since the time of their creation.

These requirements for the Document Receiving System are onerous and go well past electronic document receipt and storage. Delegated states will have to commit significant fiscal resources to creating such a document management system before they can be authorized to receive electronic documents. Additionally, any development that has already been completed will have to be brought into compliance with these requirements before the state can continue to use previously developed systems. In most cases, the current systems can not be modified to such a degree and will probably have to be replaced with new systems to gain approval.

APPROVAL PROCESS

Section 3.3000 of the proposed rule requires that Delegated states significantly alter their current environmental programs to ensure they meet the new requirements. This can be translated to a large regulatory and statutory undertaking to modify California's existing laws so as to gain U.S. EPA approval to receive and store electronic documents.

SUMMARY

The proposed rule would create a burdensome new standard upon states and local governments that wish to accept documents electronically. Instead of establishing a set of portable standards for governments and businesses, this rule goes well beyond that to establish a new level of Delegated Program that states must meet. The effect will be to comply or be forced to continue to use old and expensive technologies. This will limit the future use of any emerging technology that might make document movement and

storage faster and cheaper. It will also lock states into using only that technology approved by U.S. EPA. We recommend that this rule proposal be significantly revised to alleviate above described concerns.